

**Office of Chief Counsel
Internal Revenue Service
memorandum**

date:

March 4, 1997

to:

Rhonda Norman CSC:T:A:AD

from:

Assistant Chief Counsel (Disclosure Litigation) CC:EL:D

subject: Update of IRM (35)264

You had asked that we amplify our memorandum, dated October 6, 1988, entitled "Diverting I.R.C. § 6103 Requests to FOIA" as to it pertains to service center photocopy units disclosing closed audit files in response to submissions of Form 4506. You advised that service center disclosure personnel were concerned about workload distribution if the photocopy units were unable to provide a Form 4506 requester with copies of Examination documents maintained in closed audit files (that are physically associated with tax returns upon closing).

Our prior memorandum focused on the availability of closed audit files under Rev. Proc. 66-3 (subsequent modifications omitted), which established the use of Form 4506 to access returns and certain other information. Our memorandum stated that it was not the intent of this procedure to provide availability to audit file documents. Rather, the "related documents" referred to in the revenue procedure are the schedules or attachments included with the filed return. We concluded that since closed audit files were not available upon submission of a Form 4506 request, to the extent such a request sought audit file documents, the request should be referred to FOIA (or Privacy Act) access procedures, as implemented by disclosure personnel. This advice has remained unchanged in the intervening nine years.

Present procedures do not allow anyone, other than trained disclosure personnel, in coordination with the affected function(s), to make decisions with respect to the disclosure of closed audit files. The disclosure authorization set forth in Rev. Proc. 66-3 is limited to the disclosure of returns, including any schedules or attachments filed therewith, and certain other information (not relevant herein). As you may be aware, I.R.C. § 6103(e) establishes that persons demonstrating a material interest as defined by statute are entitled to access such returns without exception. In contrast, a person demonstrating a material interest in a return may obtain access to return information (e.g., transcripts of account, statutory notices of deficiency, and other documents in closed audit files) only absent the appropriate official's determination that such disclosure would not seriously impair Federal tax administration. I.R.C. § 6103(e)(7). While there is no legal impediment to changing procedures to expand the reach of Rev. Proc. 66-3 to include certain documents contained in closed audit files, new procedures, after coordination with appropriate IRS (and Counsel) functions, would

have to be implemented. In fact, it is our recollection that at the time of our 1988 memorandum we invited disclosure personnel to identify a "laundry list" of other documents they deemed susceptible to photocopy unit processing upon submission of Form 4506; we are unaware of any such effort to consider expansion of the categories of documents to be processed by photocopy unit personnel in response to submission of Form 4506.

In sum, we believe the IRS could take steps to authorize service4 center photocopy units to disclose certain predetermined documents upon the establishment of the appropriate protocols.¹ Should you desire to initiate such steps, we suggest your office contact the office of the National Director, Governmental Liaison and Disclosure.

JOHN B. CUMMINGS

Cc: Director, 6103 Operations Branch CP:EX:GLD:D:O

¹ You should be aware that the authority in Rev. Proc. 66-3, premised upon the authority granted the Commissioner in I.R.C. § 6103(p)(2), does not supersede the FOIA. Thus, the IRS could not prevail in a judicial forum if taxpayers challenged the IRS's diversion of their access requests away from FOIA and disclosure personnel towards the Form 4506 procedures and photocopying units.